



ARIZONA DEPARTMENT OF ADMINISTRATION
Enterprise Procurement Services

Appeal and Agency Report
Policy and Procedure #9

For

State Governmental Units

This is not intended or represented to be the official record of laws and regulations covered under Chapter 23, Article 9 and applicable administrative rules pertaining to appeals and agency reports . In the event of a discrepancy between these procedures and applicable statute and rule, statute and rule shall prevail.

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I. Introduction:

An appeal to a Procurement Officer's Decision is the second step in the administrative process to ensure the fair and equitable treatment of all persons who deal with the procurement process of the State. An interested party may disagree with a Procurement Officer's Decision and request an independent and impartial review of the issues by the Director of the Department Of Administration. This is done through the appeal process established under R2-7-909 of the Arizona Procurement Code. The purpose of this policy and procedure is to standardize how State governmental units are to respond to appeals to procurement officer's decisions.

It is the State's responsibility, under chapter 23, article 9, and administrative rules A.A.C. R2-7-909 through R2-7-915 of the Arizona Procurement Code (APC), to review and respond to Appeals to the Director concerning Procurement Officer's Decisions. These responses are known as Agency Reports.

II. Authority:

Chapter 23, article 9, and administrative rules A.A.C. R2-7-909 through R2-7-915 of the Arizona Procurement Code (APC).

III. Definitions:

- 1 Agency Report: A report to the Director in response to an appeal, containing responses and recommendations by a Procurement Officer along with other relevant documents (R2-7-912)
- 2 APC: Arizona Procurement Code.
- 3 Appeals to the Director: A written objection to a decision entered or deemed to be entered by a Procurement Officer in a Procurement Officer Decision (see protest procedure Section 9.1).

- 4 Appellant: The party who files an appeal to a Procurement Officer's Decision.
- 5 CPO: Chief Procurement Officer.
- 6 Director: The Director of the Department Of Administration.
- 7 Procurement Officer: An individual duly authorized to enter into and administer contracts within the limits of their authority.
- 8 Protest: A written objection submitted by an interested party to a solicitation, proposed award or award of a contract.
- 9 State Governmental Unit: Any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State subject to the provisions of the Arizona Procurement Code.

IV. Responsibilities:

The Procurement Officer, CPO or other official designated by the CPO for the State governmental unit issuing the solicitation or awarding the contract being contested shall file the Agency Report.

Once the Agency Report is filed the Procurement Officer may pursue a settlement at any time before a final decision by the Director is rendered. Any proposed settlement shall be submitted to the State Procurement Administrator.

V. Procedures:

Agency Reports continue to form the foundation for possible administrative hearing arguments and even litigation and will be read by lawyers, hearing officer's and others who are not familiar with procurement or the technical requirements. Responses should be clean, clear, complete and

concise and the Appellant should be treated with courtesy and respect. See attachment No.1 for the format and sample language that should be followed when writing an agency report:

VI. Exhibits:

Another area where Agency Reports differ from Procurement Officer's Decisions is the requirement for specific attachments or exhibits that are to be made part of the report. A.A.C. R2-7-912, paragraph "A" states in part, "*The report shall contain copies of*".

1. *The appeal;*
2. *The bid or proposal submitted by the Appellant;*
3. *The bid or proposal of the firm that is being considered for award;*
4. *The solicitation, including the specifications or portions relevant to the appeal;*
5. *The abstract of bids or proposals or relevant portions;*
6. *Any other documents that are relevant to the protest; and*
7. *A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.*
(Usually contained in the Agency Report itself).

VII. Establishment of Timeframes:

Chapter 23, article 9, of the APC establishes timeframes for the filing of an appeal and the issuing of the Agency Report. These are computed as follows:

- A day is a calendar day;
- Day one is the day after filing;
- The last day is calculated as follows: Day one plus the total number of days specified by rule (i.e. 10 days for filing the Agency Report with the Director);
- Should the last day fall on a Saturday, Sunday or State Observed holiday then the last day shall be the next day that is not a Saturday, Sunday or State Observed holiday.

VIII. Untimely or Late Appeals:

A.A.C. R2-7-909 establishes the following timeframe for filing an Appeal to the Director:

- An Appeal from a decision entered or deemed to be entered by the Procurement Officer shall be filed with the Director within 5 days after the date the decision is received. The Appellant shall also file a copy with the Procurement Officer.

A statement by the Procurement Officer that an Appeal is untimely shall be contained in the discussion section of the Agency Report.

The Procurement Officer should continue to address issues contained in an untimely appeal and submit them in the Agency Report to the Director.

Example: ABC Company filed its Appeal more than 30 days after receipt of the Procurement Officers Decision. Although the appeal is untimely, the following discussions are provided.

IX. Receipt, Routing and Filing of Appeals and Agency Reports:

State governmental units shall implement and maintain internal policies and procedures for the receipt, routing, mailing and filing of Appeals and Agency Reports in accordance with all prescribed administrative rules.

ATTACHMENT NO.1 “FORMAT AND SAMPLE LANGUAGE FOR AGENCY REPORTS”.

DOCUMENT TITLE

This section identifies the responsible State governmental unit, the issue (appeal of a Procurement Officer’s Decision to a protest of a solicitation or contract award), Appellants name, solicitation or contract number, responsible party and authority.

Example:

BEFORE THE DIRECTOR

ARIZONA DEPARTMENT OF ADMINISTRATION

(APPELLANT’S NAME))	AGENCY REPORT,
APPEAL OF PROCUREMENT OFFICERS DECISION)		PURSUANT TO
(SOLICITATION) or (CONTRACT) NUMBER)	A.A.C. R2-7-912

I. INTRODUCTION:

This section provides the opening statement identifying the Appellant, the office, citation of applicable rule/law and a statement confirming that the initial protest was denied.

Example: This Agency Report is filed in response to the ABC Company’s appeal to the Director of the Procurement Officers Decision dated (date). The Procurement Officer denied the protest. ABC Company filed its appeal with the (State governmental unit’s name) on (date) pursuant to Arizona Administrative Code (A.A.C.) R2-7-909.

II. FACTS:

This section should list the relevant and material facts and events concerning the solicitation and any resultant contract award, such as the solicitation issue date, number of solicitations sent, pre-proposal or pre-bid conferences held, amendments issued, protest date, Procurement Officer's Decision, etc. Facts should be concise and to the point and be one sentence in length (if possible). The purpose is to provide a chronological record of events for the reader or potential readers of the decision.

Example:

1. (Date): Notification of solicitation (IFB) or (RFP) number (123) was sent to (Number) prospective offerors.
2. (Date): A pre-proposal or pre-bid conference was held at (time and location).
3. (Date): Solicitation amendment No 1 was issued.
4. (Date): Offers were received.
5. (Date): Offers were evaluated by the Technical Evaluation Committee.
6. (Date); the Contract was awarded by the Procurement Officer to XYZ Company.
7. (Date): ABC Company filed its protest.
8. (Date) The Protest was denied in the Procurement Officer's Decision dated (date).
9. (Date): ABC Company appeals the Procurement Officer's Decision.

III. DISCUSSIONS

This section shall describe the areas of controversy or dispute between the Appellant and the State. The Procurement Officer shall address each issue identified by the Appellant with discussions and conclusions. Issues may be combined if the discussion and conclusion is the same. Special care should be taken to recognize other issues that may be disguised in the Appeal. Issue recognition is an important part of the Agency Report as an issue cannot be argued if it is not understood or recognized.

Once identified, each issue or combination of issues should be briefly re-stated to make it clear to the reader what issue is about to be discussed. Re-stated issues should commence with: The ABC Company (argues, claims, alleges, maintains, etc.) followed by the re-stated issue.

The Procurement Officer should state and address the issue(s) as presented by the Appellant. Do not attempt to clarify or interpret vague or poorly written complaints or assume intent. Instead state that the complaint is vague or confusing.

Once identified, each issue should be followed with discussions and conclusions by the Procurement Officer. Discussions should state facts, legal citations and conclusions clearly and concisely. Conclusions should provide a logical explanation as to why either the Appellant is correct (issue should be sustained) or Procurement Officer is correct (issue should be denied).

Discussion points and conclusions should:

- Be brief and to the point (word efficiency is key);
- Focus on the issue at hand (straying may result in additional arguments being brought by the Appellant);
- Be stated in simple terms;
- Be unemotional (a defensive, argumentative or curt tone may affect the credibility of the discussion and possibly taint the State's position of being fair and objective); and
- Cite applicable law or rule.

○ Writing Tips:

- Outline the Appeal to organize issues before drafting the Agency Report;
- Use short declarative sentences and present the facts in a straightforward manner. "The proposal arrived at 3:33 PM, 33 minutes late and is untimely";
- Avoid legal jargon and complex words;
- Define acronyms when first used. "Arizona Administrative Code (A.A.C.)";
- Use precise references to law. Avoid vague or general references to the law or "Arizona Procurement Code";
- Avoid unnecessary adverbs like "clearly", "simply" or "obviously";
- Avoid emotional and offensive words;
- Be careful when using adjectives. Use the Appellant's name or "Appellant" instead of "they" and avoid using "you";
- Do not avoid addressing issues. Admit procurement errors;
- Spell-check the report carefully;
- Invite someone else to read or edit the report for readability, grammar and logic.

Successful discussions and conclusions are those which are well thought out, concise, stated in objective neutral tones, have sound basis of fact or law and may be clearly understood by a casual reader (keep in mind that the Agency Report may be read and interpreted by individuals with little or no procurement knowledge.)

Example: ABC Company argues that, *"The solicitation did not include procedures for protesting either the solicitation or the ultimate award."*

This is not correct. As stated in the Procurement Officers Decision, as with all solicitations issued by the State, the Uniform Instructions to Offerors section, paragraph 7, of solicitation number 123 describes the procedures for filing protests.

IV. Recommendation

Agency Reports differ from Procurement Officers Decisions an Agency Report can only make a recommendation to dismiss an Appeal.

Example: Based on the reasons stated above, Procurement Officer requests dismissal of the ABC Company appeal.

Effective this _____ Day of (month), (Year)

John O. Adler, CPO


State Procurement Administrator

December 14, 2005